UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/C.12/1990/SR.47
13 December 1990

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Fifth session

SUMMARY RECORD OF THE 47th MEETING IN 1990

Held at the Palais des Nations, Geneva,
on Tuesday, 11 December 1990, at 10 a.m.

Chairman: Mr. KOUZNETSOV

CONTENTS

Consideration of reports

(a) Reports submitted by States Parties in accordance with articles 16 and 17 of the Covenant (continued)

Dominican Republic (continued)

Submission of reports by States parties in accordance with articles 16 and 17 of the Covenant (continued)

Organization of work (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.90-18793/2700B

The meeting was called to order at 10.25 a.m.

CONSIDERATION OF REPORTS (agenda item 7)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Dominican Republic (E/1990/5/Add.4) (continued)

1. At the invitation of the Chairman, Ms. Bonetti-Herrera and Mr. Suazo (Dominican Republic) took places at the Committee table.

2. Mr. TEXIER offered the following concluding observations on the initial report submitted by the Dominican Republic concerning rights covered by articles 1 to 15 of the Covenant (E/1990/5/Add.4). The Committee had noted with satisfaction that the Government had been prepared to enter into a dialogue; its report, however, had been too legalistic and not specific enough. Although the report detailed the relevant articles of the Constitution and other legislative texts, it did not offer enough information on the Covenant's implementation in practice and the country's jurisprudence, and failed to provide statistical data relating to the rights covered in articles 6 to 15. The rights to social security (art. 9) and to an adequate standard of living (art. 11) had not been discussed adequately, while the right to take part in cultural life and to protection of scientific, literary or artistic production (art. 15) had not been touched on at all.

3. The pre-sessional working group had prepared 58 questions and transmitted them to the delegation of the Dominican Republic in good time, yet the delegation's replies had been disappointing. While additional information had been provided on, among other things, minimum wages, working hours, pensions, child labour, illiteracy and education, far too many questions had remained unanswered. The information on social security, trade union organizations, the right to strike, benefits for pregnant women, abortion and the rights to housing and health had been unsatisfactory.

4. Members of the Committee had put numerous questions to the Dominican Republican delegation and had offered their comments on the report, on the replies and on the implementation of the Covenant in practice. The Government of the Dominican Republic had then transmitted to the Committee a letter in which it had requested additional time to prepare responses. The letter had been worded in such a way that members of the Committee had deemed it necessary to formulate a reply.

5. Two matters remained of special concern to the Committee: the treatment of Haitian workers and mass evictions from housing in Santo Domingo. The Committee requested additional information on the recruitment of Haitian workers and their situation in the Dominican Republic. Were they free to return to Haiti during the sugar-cane harvest and to choose their place and type of work? What were their wages, social security benefits and working conditions? What steps had the Government taken to end forced labour, in the light of the report of the presidential commission?

6. The Committee's information indicated that over 15,000 families had been expelled from their homes in Santo Domingo in the past four years to make way for urbanization measures. Some of those families had been obliged to take refuge in makeshift housing without sanitation, while others were forced to pay inflated rents. The expulsion procedures had in many instances failed to respect the relevant legislation on land registration.

7. The Committee thus believed it had sufficient information to conclude that article 11 of the Covenant had been violated. It wished to receive additional information on the right to housing, and deemed it necessary for a supplementary report to be submitted to provide answers to all the questions not yet dealt with.

8. The CHAIRMAN, noting that no other member of the Committee wished to offer concluding observations, announced that the Committee had completed its consideration of the initial report of the Dominican Republic and of item 7 of its agenda as a whole.

9. Ms. Bonetti-Herrera and Mr. Suazo (Dominican Republic) withdrew.

SUBMISSION OF REPORTS BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6) (continued) (E/C.12/1990/CRP.3)

10. Mr. SIMMA, introducing his proposal for revised guidelines (E/C.12/1990/CRP.3), said the Committee's fifth session had demonstrated the urgent need for revision of the system for examining reports. The list of questions prepared by the pre-sessional working group tended to overwhelm delegations, even when it was submitted in advance. There was obviously a need to transpose the core of the questions into the guidelines themselves. That was what he had attempted to do with his revision. The new guidelines were intended to ensure that the Committee received better-quality reports and to facilitate the task of the pre-sessional working group and the Committee itself. He had deliberately chosen a repetitive structure to ensure that general aspects of the enjoyment of certain rights, as well as specific matters relating to implementation of the Covenant's provisions, were covered for each article.

11. All the questions that began "In case your country is a party" should be modified to read: "If your State is a party to (name of the relevant instrument) and has already provided information to the supervisory committee or committees concerned which is relevant to the provisions of this article, you may wish to refer to the appropriate part of those reports rather than repeating the information here. However, all matters which arise under the present Covenant and are not covered fully in those other reports should be dealt with in the present report."

12. The seventh question under article 9, which read: "Please indicate the role of international assistance for the full realization of the right enshrined in article 9", should be reproduced, mutatis mutandis, for each of the articles.

READEX FICHE

13. Finally, he fully endorsed the amandment proposed by Mr. Alston to the second question under article 11, as it condensed and improved the original text. It read:

"2. The right to adequate food

(a) Please provide a general overview of the extent to which the right to adequate food has been realized in your country. Describe the sources of information that exist in this regard, including nutritional surveys and other monitoring arrangements.

(b) Please provide detailed information (including statistical data broken down in terms of different geographical areas) on the extent to which hunger and/or malnutrition exists in your country. This information should deal in particular with the following issues:

(i) the situation of especially vulnerable or disadvantaged groups, including:

1. landless peasants
2. marginalized peasants
3. rural workers
4. rural unemployed
5. urban unemployed
6. urban poor
7. migrant workers
8. indigenous peoples
9. children
10. other especially affected groups

(ii) Any significant differences in the situation of men and women within each of the above groups

(iii) The changes that have taken place over the past five years with respect to the situation of each of the above groups

(c) During the reporting period, have there been any changes in national policies, laws and practices negatively affecting the access to adequate food by these groups or sectors or within the worse-off regions? If so, please describe these changes and evaluate their impact.

(d) Please indicate what measures are considered necessary by your Government to guarantee access to adequate food for each of the vulnerable or disadvantaged groups mentioned above and for the worse-off areas, and for the full implementation of the right to food for both men and women. Indicate the measures taken and specify time-related goals and nutritional benchmarks for measuring achievements in this regard.

(e) Please indicate in what ways measures taken to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge have contributed towards, or have impeded realization of, the right to adequate food. Please describe the impact of these measures in terms of ecological sustainability and the protection and conservation of food-producing resources.

(f) Please indicate what measures are taken to disseminate knowledge of the principles of nutrition and specify whether any significant groups or sectors within society seem to lack such knowledge.

(g) Please describe any measures of agrarian reform taken by your Government to ensure that the agrarian system is efficiently utilized in order to promote household-level food security in human dignity both in the rural and urban settings, taking into account articles 6 to 8 of the Covenant. Describe the measures taken:

(i) to legislate to this effect

(ii) to enforce existing law to this effect

(iii) to facilitate monitoring through governmental and non-governmental organizations.

(h) Please describe and evaluate the measures taken by your Government in order to ensure an equitable distribution in terms of both production and trade of world food supplies in relation to need, taking into account the problems of both food-importing and food-exporting countries."

14. Mr. WIMER ZAMBRANO, referring to part A, paragraph 1 (c) of the draft proposal, said he would like to know whether it would be possible for members to request information or other social indicators. In addition, he wondered whether the structure of the draft should be retained or whether the text should be shortened.

15. Mr. ALSTON recalled that the Committee had already agreed at its first session on the need to revise its guidelines. It had been engaged in that process ever since and had set up working groups and requested members to make contributions. It was of the greatest importance that the Committee should adopt the revised guidelines at its current session because, until there were precise guidelines, the whole process of examining the reports of States parties would be relatively unsatisfactory.

16. With regard to the content of the guidelines, he stressed that it would not be possible for the Committee to monitor the implementation of the Covenant, which had a whole range of specific provisions, by singling out only a small number of issues. He emphasized that the less demanding the guidelines were, the less serious the whole exercise would seem to be.

17. The Committee was a unique body in that it called States to account for their economic and social policies. It was therefore imperative for the Committee to adopt detailed and precise guidelines. That did not mean, however, that it would not be possible for members to propose the deletion of certain questions.

18. With regard to procedure, members must bear in mind that the guidelines were wide-ranging and recognize that whatever was adopted at the current session could be amended in the future. However, there was a point at which the Committee would have to entrust the task of finalizing the text to Mr. Simma, in conjunction with another member, on the basis of the proposals made.

19. Mr. SPARSIS said, with regard to the structure of the draft proposal for revised guidelines, that he had been involved in the preparation of reports for the International Labour Organisation and the Council of Europe. The reports for the ILO were based on specific guidelines and were sometimes very extensive. There were no specific guidelines for reports to the Council of Europe and he recalled problems that had arisen in his Ministry in drafting a report because of that fact.

20. He proposed that the Committee should adopt the revised guidelines in their existing form. In his opinion, the more detailed the guidelines were, the more they would facilitate the task of those who prepared a State party's report. He stressed that the guidelines were not exhaustive and were designed to enable the State party to report in an intelligent manner.

21. He proposed that the Committee should examine the guidelines article by article on the understanding that the preparation of the final draft would be entrusted to the Rapporteur, the Chairman and Mr. Simma.

22. Mr. MARCHAN ROMERO fully endorsed the remarks made by Mr. Sparsis. He considered that the revised text would constitute a good guide for States parties in preparing their reports and would also be useful for the members of the Committee. In his opinion, the pre-sessional working group would be able to draw the Committee's attention to any points not answered by a State party. The document was flexible because the matter concerned rights that were evolving.

23. Ms. TAYA endorsed the views expressed by previous speakers. She proposed that a text should be inserted as paragraph 4 of part A of the draft proposal for revised guidelines requesting information on the use of international co-operation. The Committee might ask (a) what mechanism existed to ascertain the needs of ordinary people with a view to making optimum use of international co-operation and (b) request information concerning the actual use of international co-operation and its effectiveness in meeting minimum core obligations with regard to the protection of human dignity.

24. Mr. ALVAREZ VITA, referring to the revised guidelines, wondered if the Committee should ask State parties whether they were parties to certain conventions. The Committee should not give the impression that it did not know whether States were parties to conventions. Moreover, a State party unable to give information on a certain point should be invited to give reasons for that situation.

25. Mr. TEXIER congratulated Mr. Simma on an exhaustive and sound piece of work. Like the previous speaker, he had some doubts about the information requested from States parties in paragraph 1 under article 6. He felt that it would be more appropriate to ask the Secretariat or the specialized agency concerned, in particular the ILO, for the relevant information. In that case, that section might be deleted. With regard to paragraph 2 (d) under article 7

he thought it might be useful to add "in particular, fatal accidents" in the section relating to statistics on accidents at work. Most States parties had such statistics available and it would be interesting to see what proportion of the total number of occupational accidents such fatal accidents represented. He did not understand the use in paragraph 4 under article 9 of the terms "formal social security schemes" and "informal arrangements". To judge from his own country, the option was between public and private schemes. With regard to the section on article 11, he had two queries: the first related to paragraph 1 (c). He wondered whether the per capita GNP for the poorest 40 per cent of the national population was a statistical indicator generally used by international organizations. In paragraph 3 (d) (i) there was a reference to "enabling strategies" - a phrase with which he was unfamiliar. He agreed that the Committee should adopt the draft guidelines at its current session. Recent experience had made it clear that States parties were uncertain how to prepare reports and that some used their uncertainty as a pretext for producing inadequate reports. It was understandable that not all States had a highly evolved statistical system, but the guidelines might help them to co-ordinate their efforts towards progressively achieving the objectives of the Covenant.

26. Mr. SIMMA referred to the wording which he had read out earlier to replace that currently appearing in paragraph 1 under article 6 of the draft. The point was to give States parties an opportunity to address the comments made in their regard by the ILO and at the same time to ensure that all matters not fully dealt with in their reports to other supervisory bodies would be covered in their reports to the Committee. The reference to formal and informal social security schemes in paragraph 4 under article 9 was intended to cover the situation in African countries where formal schemes did not carry the same weight and there was greater reliance on extended families. He would propose that reference should be made to "formal/informal" or "public/private" social security schemes. With regard to paragraph 1 (c) in the section on article 11, the per capita GNP of the poorest 40 per cent of the population was the indicator generally used by the World Bank in studies on income distribution.

27. Mrs. JIMENEZ BUTRAGUEÑO said she felt that the most logical approach was to raise specific points under individual articles, which might possibly be submitted in writing. With regard to matters raised by previous speakers, she was in agreement with the proposal to insert a section on the use of international assistance: both donor countries and recipient countries should show responsibility for the efficient management of assistance. She agreed with Mr. Marchan Romero about the need to associate the pre-sessional working group with the guidelines and Mr. Alvarez Vita's suggestion that, if a State party was unable to provide information on any particular point, it should state the reason for that situation.

28. Mr. GLAIEL said that, as the only Arabic-speaking member of the Committee, he hoped he would be afforded adequate time to read the Arabic text of the draft guidelines carefully before they were adopted, to ensure that there were no errors of translation. Referring to paragraph 1 (b) under article 6, he observed that, if a State had not become a party to a particular convention, there might be a variety of political, social or religious factors which made it undesirable to provide the relevant information. He wondered whether it was permissible to attempt to force States parties to give information which they did not provide to other organizations, for example,

about discrimination against women on religious or legal grounds. Mr. Simma's draft was comprehensive and should prove useful, particularly to States which did not have a large number of experts working in the fields involved. He took it that if the Committee adopted the guidelines, there would be no difficulty in amending them, if necessary, at a future date.

29. Mr. KONATE said that developing countries which were parties to the Covenant would have great difficulty in complying with the detailed guidelines. The information called for under article 11, for example, required a degree of administrative sophistication and bureaucratic tradition which was generally lacking in such countries. They would also have great difficulty in providing statistics showing how national trends were evolving. When the Committee submitted the guidelines to the Economic and Social Council, he hoped that they would be accompanied by an express request for the advisory services programme to provide assistance to certain countries along the lines of the workshops and round-tables which had been held by UNITAR to help those responsible for preparing national reports.

30. Turning to specific comments, he observed that substantially the same question appeared in paragraph 2 (d) under article 7 regarding health and the working environment and in paragraph 3 (f) under article 12 with reference to "environmental and industrial hygiene". The question was better placed under article 7. With regard to the section on article 11, he did not understand the phrase "niveau de vie culturel" ("standard cultural, etc., of living") in paragraph 1 (a). Moreover, the phrase "seuil de pauvreté" ("poverty line") in paragraph 1 (c) was not a concept which was universally accepted. He suggested that a simpler approach would be to ask what steps were being taken to integrate the poorest or most disadvantaged sectors into development. He did not understand the reference in paragraph 2 under article 15 to "l'héritage naturel de l'humanité" ("mankind's natural heritage") and he wondered whether a more appropriate phrase would not be "patrimoine de l'humanité". Furthermore, it seemed to him that paragraphs 4 and 5 under article 15 were repetitious and might well be shortened and combined.

31. Mr. NENEMAN said that the draft guidelines might produce material which would be useful to the United Nations system as a whole. However, he wondered what their impact would be in practical terms, with specialists in the various national ministries producing increasingly large amounts of information. The Committee might find that it required additional sessions. The guidelines would also have a considerable effect on the work of the pre-sessional working group. It might even be that the Committee would save time currently spent in putting oral questions and hearing the answers from the representatives of States parties. He was in favour of adopting the draft guidelines, but it would probably be necessary to review the experiment after two years.

32. Mr. MUTERAHEJURU said that Mr. Simma's draft guidelines were excellent but that officials at his country's Foreign Ministry had found some of them very complicated. He agreed with Mr. Konate that there was a need for assistance to be given to those who would have to answer the questions, particularly in countries lacking in qualified personnel.

33. Moreover, some of the terminology used in paragraph 2 (c) of the questions under article 11 such as "landless peasants", "marginal peasants", "rural workers", "rural unemployed", and even "indigenous people", would be hard to understand in his country. He therefore requested some clarification of those terms.

34. Moreover, the concept of international co-operation should be made more explicit so as to make it clear that the term did not merely refer to economic co-operation. Even the least developed countries could contribute to the improvement of the international moral and physical environment. It should be made clear that all countries were responsible for what was happening in the world.

35. He agreed that the guidelines should be adopted at the current session, for clearly they were needed as soon as possible.

ORGANIZATION OF WORK (agenda item 4) (continued)

36. The CHAIRMAN announced that a revised version of the Committee's proposed reply to the note verbale from the Government of Argentina, dated 4 May 1990, taking account of the suggestions of members, had just been circulated. The letter would be sent out under his signature.

37. Mr. ALSTON read out the text of the letter, which was the following:

"I wish to refer on behalf of the Committee on Economic, Social and Cultural Rights to the note verbale addressed to its Chairman on 4 May 1990 relating to the concluding observations of the Committee at its fourth session concerning the initial report of Argentina on articles 13-15 of the Covenant. After discussion with the Committee on these separate occasions during its fifth session I have been requested by my colleagues to respond in the terms set out herein.

One of the issues arising from the note verbale concerns the methods of work of the Committee and, in particular, its practice of reflecting in its report any concluding observations that its members consider to be warranted at the conclusion of the examination of each State party's report. This procedure has been clearly laid down in the Committee's reports, and is reflected in the rules of procedure which were adopted by the Committee at its third session. As the Government will certainly appreciate, the Committee is obliged to retain its autonomy in such matters in order to ensure its effective functioning.

Another issue arising from the note verbale concerns the issue of indigenous minorities and the use by some members of the Committee of information provided to them by non-governmental organizations. The Committee notes that its rules of procedure provide for the use of all relevant sources of information to facilitate its work. The Committee attaches great importance to the need to ensure the proper application of its procedures and its members have always endeavoured to respect this principle. It is with considerable regret therefore that the Committee notes the view of the Government that, in this instance, its members failed to follow the correct procedures. In order to ensure that the Committee does indeed take fully into account all information available from the Government, the Committee warmly welcomes the information that the Government will, in due course, transmit to the Committee. The Committee looks forward to receiving that information which will contribute further towards the constructive dialogue that characterizes its work."

38. The CHAIRMAN said he took it that the Committee wished to adopt the revised version of the letter to the Government of Argentina.

39. It was so decided.

40. The CHAIRMAN said that the representative of the Dominican Republic had requested an opportunity to make a brief statement to the Committee in order to explain the background to his delegation's recent letter to the Committee, as read out at the 45th meeting.

41. The officers of the Committee suggested that the Committee should accede to that request in order to reaffirm the Committee's desire to conduct a dialogue with States parties to the Covenant. The best time for the statement would be during the consideration of the Committee's report on Thursday and Friday of that week.

42. Mr. ALSTON said that the Committee had no choice but to hear the representative of the State party, but the question of the Committee's response to the letter still remained, whatever explanations were proferred by the representative of the Dominican Republic.

43. The Committee had two options in that regard. One was to draft a letter of reply and the other was to include a paragraph in the report noting that correspondence had been received from the Government of the Dominican Republic and making general observations on the manner in which the dialogue between the Committee and States parties should be conducted. If that solution were adopted, it would also provide an opportunity to mention the incident between Mr. Alvarez Vita and the representative of Costa Rica. So far the Committee had not agreed to include a paragraph stating that it attached great importance to the need for States parties to refrain from making personal attacks on members of the Committee and to reply to questions in an appropriate manner.

44. Mr. TEXIER agreed that there was a need to reply to the communication from the Dominican Republic. However, before any decision was taken he wished to see a translation of the communication in French.

45. The question of including a paragraph on the subject in the report was a separate issue. He had referred to the communication in his concluding observations on the Dominican Republic, but he considered that the Committee should also refer to the Costa Rican incident and stress the need for everyone, Government representatives as well as members of the Committee, to refrain from making personal attacks. The paragraph should talk about dialogue in general terms so that the Committee's comments could not be interpreted as an attack on any particular State party.

46. Mr. ALSTON, speaking on a point of order, drew attention to the fact that the communication of the Dominican Republic was not a letter from the Government but a statement by the Government's representatives.

47. Mr. MARCHAN ROMERO said that that observation was timely. His own view was that it would suffice to include a suitable paragraph in the final conclusions.

48. Mr. SPARSIS urged the Committee to defer a decision on its reply to the Dominican Republic until it had had an opportunity to hear what the representative had to say.

49. The CHAIRMAN suggested that the representative of the Dominican Republic should be requested to explain the nature of the communication and its background.

50. There seemed to be general agreement that an opportunity should be given to the representative of the Dominican Republic to address the Committee on Thursday morning.

51. Mrs. JIMENEZ BUTRAGUEÑO, supporting Mr. Texier's request, said that she wished to have a copy of the text of the Dominican Republic letter in Spanish.

52. She also agreed with Mr. Sparsis that, before taking a decision, the Committee should hear the statement by the representative of the Dominican Republic.

53. The CHAIRMAN said that the text of the communication from the Dominican Republic had been sent for translation into the various working languages and would be circulated as soon as it became available.

54. Mr. ALVAREZ VITA agreed that the Committee should give the representative of the Dominican Republic an opportunity to address it.

55. As to the incident with the Costa Rican representative, he had understood that the Rapporteur was to be asked to find suitable wording for inclusion in the report and had been surprised to hear him say that the matter was still pending. Further discussion of an unpleasant incident should be avoided.

56. The CHAIRMAN said that Mr. Alston had agreed to reflect the discussion in the report. If the need arose, the Committee would return to the matter when it took up its report.

The meeting rose at 1 p.m.